## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	<b>✓</b> Force	☐ Discourt.	☐ U.S.
Owen Godshall		Squad #15	202100819	☑ Abuse	O.L.	✓ Injury
Incident Date(s)		Location of Incident:	<u> </u>	Precinct:	18 Mo. SOL	EO SOL
Friday, 12/18/2020 12:49 PM		Atlantic Avenue-Barclays Center Subway Station; Transit District 32 stationhouse  6/18/2022		6/18/2022	6/18/2022	
Date/Time CV Reported		CV Reported At:	CV Reported At: How CV Reported: Date/Time Received at CCRB		RB	
Thu, 02/04/2021 3:20 PM		CCRB	On-line website Thu, 02/04/2021 3:20 PM			
Complainant/Victim	Type	Home Addre	ess			
Witness(es) Home Address						
Subject Officer(s)	Shield	TaxID	Command			
1. SGT Donald Evans	04040	948941	TB DT32			
2. POM Shon Simmons	15020	952241	TB DT32			
3. POM Marze Murray	19510	953164	TB DT32			
Officer(s)	Allegati	on		Inve	estigator Recon	nmendation
A.SGT Donald Evans	Force: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Sergeant Donald Evans used physical force against § 87(2)(b)					
B.POM Shon Simmons	Force: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Police Officer Shon Simmons used physical force against §87(2)(b)					
C.POM Marze Murray	Force: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Police Officer Marze Murray used physical force against § 87(2)(b)					
D.POM Shon Simmons	Abuse: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Police Officer Shon Simmons threatened §87(2)(b) with the use of force.					
E.SGT Donald Evans	Abuse: At the Transit District 32 stationhouse, Sergeant Donald Evans threatened to arrest \$87(2)(b)					

### **Case Summary**

On February 4, 2021, \$87(2)(b) filed this complaint with the CCRB via the website. At approximately 12:49 p.m. on December 18, 2020, 387(2)(5) entered the Atlantic Avenue-Barclays Center subway station in Brooklyn. §87(2)(b) was transferring from a bus to the subway. When she saw another passenger exit the station through an emergency door, she entered through the emergency door rather than swipe through the turnstile. She was then stopped by Sergeant Donald Evans of Transit District 32, who told her that she could not enter without paying a fare. ser(2)(b) returned to the entrance and went through the turnstile, but Sergeant Evans told her that this did not change the fact that she had entered without paying. Sergeant Evans and one of his partners, Police Officer Shon Simmons of Transit District 32, ordered §87(2)(b) to provide her identification. \$87(2)(b) refused to provide it and started to walk away. The three officers then grabbed \$37(2)(b) and started to handcuff her. They allegedly tackled her to the ground while doing so (Allegations A, B and C: Force – Physical force, \$37(2)(9)). The officers then handcuffed her with the assistance of Police Officer Marze Murray of Transit District 32. During the struggle, Police Officer Simmons threatened to use pepper spray on [ST(2)] (Allegation D: Abuse of Authority – Threat of force, § 87(2)(9) began hyperventilating after her arrest. The officers called an ambulance, which transported § 87(2)(b) to § 87(2)(b) From there, she was transported to the Transit District 32 stationhouse for arrest processing. §87(2)(6) initially refused to allow officers to photograph and fingerprint her. Sergeant Evans allegedly threatened to give her additional criminal charges if she refused (Allegation E: Abuse of Authority – Threat of arrest, \$87(2)(9) ultimately complied. She was released with a DAT. She was charged with \$87(2)(b) (Board Review #01-02). §87(2)(b) requested further medical attention after her arrest. Sergeant Evans called an ambulance, which transported §87(2)(b) to §87(2)(b) The investigation obtained 11 clips of BWC footage from this incident. The videos are attached in IA #38 and summarized in IA #67 (Board Review #03-04). No other video footage was found for this incident. **Findings and Recommendations** Allegation (A) Force: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Sergeant Donald Evans used physical force against § 87(2)(b) Allegation (B) Force: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Police Officer Shon Simmons used physical force against § 87(2)(b) Allegation (C) Force: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Police Officer Marze Murray used physical force against § 87(2)(6) On February 19, 2021, \$37(2)(b) was interviewed by the CCRB. On March 2, 2021, \$37(2)(b) answered several follow-up questions via telephone (Board Review #05). On August 25, 2021, Sergeant Evans was interviewed by the CCRB. On September 30, 2021, Police Officer Murray and Police Officer Simmons were interviewed by the CCRB. The investigation was unable to obtain a statement from a witness, § 87(2)(b) (Board Review #06). It is undisputed that \$87(2)(b) entered the Atlantic Avenue-Barclays Center subway station through an open emergency door rather than swiping a turnstile. She was wearing a backpack and carrying a shopping bag. Sergeant Evans stopped her just past the turnstile. Sergeant Evans was initially alone.

as Police Officer Simmons and Police Officer Murray were busy issuing §87(2)(b)

an unrelated

summons. § 87(2)(b) told Sergeant Evans that she had just transferred from a bus. She put down her shopping bag next to Sergeant Evans and returned to the turnstile. Sergeant Evans stayed by § 87(2) s bag, § 87(2)(5) added funds to her card on a MetroCard vending machine She then went back through the turnstile, swiping her MetroCard at least once while doing so. When she returned to retrieve her bag, Police Officer Simmons had joined Sergeant Evans. Both officers ordered her to provide her identification. § 87(2)(6) refused to provide it. She then tried to step around the officers and retrieve the bag she had left by Sergeant Evans. The two officers then grabbed \$87(2)(b) to place her in handcuffs. § 87(2)(b) ended up on the ground during her handcuffing. After she was handcuffed, \$87(2)(b) started hyperventilating. She also stated that she suffered from PTSD due to a past assault. The officers called an ambulance, which transported \$87(2)(b) to \$87(2)(b) 1. After receiving treatment there, her arrest was processed at the Transit District 32 stationhouse. She was released with a DAT later that night. After her release, \$37(2)(5) asked Sergeant Evans to call her an ambulance. An ambulance responded to the stationhouse and transported her to \$87(2)(b) was no longer in police custody at the time, none of the officers accompanied her. ss7(2)(b) stated that when she returned to Sergeant Evans from the turnstile, he was joined by both

Police Officer Simmons and Police Officer Murray. All three officers asked her for her identification. She told the officers that the incident was a misunderstanding because she had a free transfer from the bus and did not have to pay a separate fare to enter the subway station. When she tried to reach for her bag, the officers stepped between her and the bag. When \$87(2)(b) then reached for the bag with her left arm, Sergeant Evans grabbed her by the wrist. §37(2)(b) told him not to touch her. She spoke in a calm tone. All three officers then tackled \$37(2) to the ground. was unable to clearly recall the specific contact that the officers made with her. When asked if there were specific parts of her body that the officers were touching, \$87(2)(b) stated, "I don't know what part of my body they didn't touch." § 87(2)(b) landed face-down on the ground. All three officers pressed their weight down on her body. She did not recall what parts of her body they pressed down on. The officers' sudden contact triggered \$87(2)(b) are s PTSD, causing her to have a panic attack. She started crying and hyperventilating. She also started wriggling her torso. She was unable to move any other parts of her body due to the officers' weight. Sergeant Evans then pulled \$87(2)(b) s arms behind her back and handcuffed her. \$87(2)(b) initially stated that it took the officers about a minute to handcuff her. She then stated that she did not recall how long their contact lasted. § 97(2)(b) experienced pain the left side of her lower back, numbness in both hands and abrasions on her wrist as a result of her handcuffing. She also stated that she has experienced a persistent "gold light" in her left eye's peripheral vision since her arrest.

According to \$87(2)(b) s medical records, she was transported from the subway station to \$87(2)(b) via EMS. She had no apparent injuries but was breathing rapidly. § 87(2)(b) stated that she has been diagnosed with PTSD. She denied suffering any injuries. §87(2)(b) was given a psychiatric examination. Afterwards, she was discharged back into police custody and transported to the Transit District 32 stationhouse. After her release, she was transported by EMS to § 87(2)(b) She complained of wrist pain and numbness related to being handcuffed. When at § 87(2)(b) , she stated that officers assaulted her at the Atlantic Avenue-Barclays Center subway station after she reached for an unspecified object. She complained of swelling and pain in her wrists. She did not allege any other injuries. §87(2)(6) was discharged later , \$87(2)(b) went to a \$87(2)(b) urgent care facility and complained that night. On § 87(2)(b) of pain in her left arm that resulted from her arrest during this incident. On § 87(2)(b) visited an optometrist's office to complain about a persistent "ring" that she had seen in her left eye's peripheral vision since this incident (Privileged Documents).

Sergeant Evans and Police Officer Simmons both stated that Sergeant Evans had stopped \$87(2)(b)

because she had entered the subway without paying. Both officers noted that the fact that \$87(2)(6) did return to the turnstile and swipe through did not alter or undo the original offense. When \$27(2) returned from the turnstile, Sergeant Evans and Police Officer Simmons asked for her identification so that they could issue her a summons. \$87(2)(6) picked up her bag and started walking away. Sergeant Evans and Police Officer Simmons then grabbed her by her arms to prevent her from leaving.

Sergeant Evans stated that some responded by pulling both of her arms against her chest. Sergeant Evans and Police Officer Simmons pulled her arms away from her chest and moved them behind her back. The officers then placed her in handcuffs. The process took about five seconds. then dropped her weight to the ground. Once down, she alternated between sitting down and lying on her sides. Police Officer Simmons stated that some dropped her weight as soon as the officers grabbed her arms. When she landed on the floor, she started flailing her limbs. He and Sergeant Evans then pulled some sams behind her back. Police Officer Murray approached them to assist in controlling her arms while she was already on the ground.

Police Officer Simmons spoke to \$37(2)(b) He then heard \$37(2)(b) shout, "Get off me." When he went over to where \$37(2)(b) and the other officers were, he found that Sergeant Evans and Police Officer Simmons had grabbed \$37(2)(b) s arms and were trying to pull them behind her back. \$37(2)(c) was agitated and shouted at the officers to get off her. She tried to push the officers away and kicked her legs. Police Officer Murray did not recall if she struck anybody. He noticed that the officers were having difficulty getting \$37(2)(b) s arms behind her back because her backpack was covering her back. Police Officer Murray lifted \$37(2)(b) s backpack up, allowing the other officers space to bring her arms back. He estimated that this process took three to five minutes. Once \$37(2)(c) was handcuffed, she dropped herself down to the floor. Police Officer Murray initially stated that \$37(2)(b) dropped her weight and went to the ground after she was in handcuffs. He then stated that she did so while the officers handcuffed her.

All three officers denied that they deliberately pushed or forced \$87(2)(b) to the floor. They denied that they used any physical force against \$87(2)(b) beyond pulling on her arms. They were unaware of \$87(2)(b) suffering any injuries during the arrest. They denied that she was hospitalized for any reason beyond her hyperventilation.

Lieutenant Awais Mazhar of Transit District 32 prepared TRI reports to document this incident (Board Review #07). The reports state that Sergeant Evans, Police Officer Simmons and Police Officer Murray used "wrestling/grappling" against [887(2)(b)] in order to "overcome resistance or aggression."

The three officers' BWC footage is attached in IA #38 (Board Review #03). Sergeant Evans' video begins after \$\frac{87(2)(6)}{2}\$ deposited her bag and walked back to the turnstiles. Sergeant Evans and Police Officer Simmons wait for her to return from. At 3:25 into the recording, \$\frac{87(2)(6)}{2}\$ returns. The officers ask for her identification. At 4:45 into the recording, \$\frac{87(2)(6)}{2}\$ walks around Police Officer Simmons and reaches towards the floor. Sergeant Evans grabs her left arm and says that he needs her identification. \$\frac{87(2)(6)}{2}\$ tells him not to touch her. Sergeant Evans replies that they are going to place her in handcuffs. \$\frac{87(2)(6)}{2}\$ shouts, "Ow," and, "Stop." She backs away from the officers towards a wall. Sergeant Evans takes out a pair of handcuffs. His jacket then covers the BWC, obstructing its view. \$\frac{87(2)(6)}{2}\$ starts crying and asks, "What are you doing to me?" Sergeant Evans tells her to stand up. At 5:15 into the recording, \$\frac{87(2)(6)}{2}\$ screams, "Please help," "Please stop," "It hurts," and, "Leave me alone." At 6:00 into the recording, a voice tells her to stop moving. Police Officer Simmons warns her that she is going to get "sprayed." At 6:50 into the

recording, Sergeant Evans moves his jacket, uncovering the BWC. He, Police Officer Simmons and Police Officer Murray are all seen leaning down over who is lying on the floor on her right side. Her arms are handcuffed behind her back. The officers lift her into a seated position. They try to pull her up into a standing position, but she does not stand.

Police Officer Simmons' footage is generally consistent with Sergeant Evans'. His footage is split into two recordings. The first begins while he and Police Officer Murray issue \$87(2)(b) summons. He then goes to stand with Sergeant Evans, who is waiting for \$87(2)(b) to return from the turnstile. At 5:45 into this recording, \$87(2)(b) returns. At 7:05 into the recording, \$87(2)(b) walks around Police Officer Simmons. She tells the officers not to touch her. Police Officer Simmons grabs her right arm. \$87(2)(b) backs towards the wall. At 7:18 into the recording, Police Officer Simmons holds her against the wall. She then sits down on the ground. Police Officer Simmons states, "You put yourself on the floor." \$87(2)(b) asks, "What are you doing?" Police Officer Simmons states, "You did that to you." He continues holding her right arm. Sergeant Evans tells her to stand up. Police Officer Simmons' jacket then covers his BWC. \$87(2)(b) starts shouting. The video then ends.

Police Officer Simmons' second recording starts about a minute and a half after the end of his first recording. At the start, the camera is dark. Police Officer Simmons appears to pick the BWC off the ground. At 0:40 into the recording, he affixes it to his chest. Sergeant Evans and Police Officer Murray stand next to her. She remains sitting until EMS arrives.

Police Officer Murray's recording starts with him issuing \$87(2)(0) summons. His position is separated from Sergeant Evans' by a set of doors. There is no line of sight between the two officers. At 7:10 into the recording, shouting is heard on the other side of the doors. Police Officer Murray goes through the doors. Sergeant Evans and Police Officer Simmons stand over \$87(2)(0) who is sitting on the floor with her back against the wall. He moves over to assist them. He and the other two officers lean down over \$87(2)(0) The officers tell her to stand up. Police Officer Murray pulls up on her backpack while Sergeant Evans and Police Officer Simmons hold her arms. \$87(2)(0) continues shouting, telling them to stop and to leave her alone. Sergeant Evans and Police Officer Simmons pull her arms behind her back. \$87(2)(0) leans forward as they do so. The officers hold her up by her arms. At 8:20 into the recording, Police Officer Simmons threatens to "spray" her. At 8:35 into the recording, the officers lower \$87(2)(0) by her arms. She sinks lands on the floor on her right side. They then apply handcuffs to her wrists. The officers then lift her into a sitting position. At that time, Police Officer Simmons' BWC is seen lying on the ground.

Both Sergeant Evans and Police Officer Simmons denied that they deliberately covered their BWCs with their jackets while arresting \$87(2)(5)

Sergeant Evans' and Police Officer Simmons' footage shows that after satisfies refused to provide her identification, she tried to grab her bag and walk away from them. When the officers grabbed her arms to stop her, she backed against a nearby wall and dropped herself to the ground. The officers are heard telling her to stand up, indicating that they had not forcibly placed her into that position. While the first two officers' videos do not clearly show what happened afterwards, Police Officer Murray's footage shows that the officers continued pulling on standards. The officers pulled satisfactory up from her seated position by her arms, but she went limp, causing her weight to pull down. The officers eventually lowered her back down to the ground, this time

onto her right side, where she was handcuffed. They are not seen forcefully tackling or slamming her to the ground.

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to place a person in custody. Any such application of force must be reasonable under the circumstances. Factors to consider when determining if a given use of force was reasonable include the nature and severity of the crime, the actions taken by the subject, whether the subject is actively resisting custody, the number of subjects in comparison to the number of officers, and the size, age and condition of the subject in comparison to the officers (Board Review #08).

discussed above, the BWC showed that the officers did not tackle \$87(2)(b) to the ground as she alleged. The officers held onto her arms and tried to pull them behind her back. \$87(2)(b) first seen on the ground after she drops down to a seated position against the wall. The officers lift her up by her arms, but she does not stand and continues dropping her weight. The officers then lower \$17(5) back to the ground, placing her on her right side. They do not shove or throw her down to the ground. The officers are then able to pull her arms behind her back for handcuffing. No other force was used against \$87(2)(b)

#### § 87(2)(g)

Allegation (D) Abuse of Authority: At the Atlantic Avenue-Barclays Center subway station in Brooklyn, Police Officer Shon Simmons threatened \$87(2)(b) with the use of force.

stated that while the officers handcuffed her, each of them told the others which of her limbs that they were holding on to. She denied that they said anything to her. She made no mention of an officer threatening to use OC spray against her.

Police Officer Murray stated that while he and the other officers attempted to handcuff \$87(2)(5) he told \$87(2)(5) that her that he would use his OC spray against him. He did so in order to convince \$87(2)(5) to cease her resistance and comply with the officers. \$87(2)(5) did not respond to Police Officer Murray's threat. Police Officer Murray decided not to use his OC spray because he and his partners were soon able to overcome \$87(2)(5) so resistance and gain control of her arms.

As discussed above, Sergeant Evan's and Police Officer Simmons' BWC footage showed that dropped her weight when the officers first attempted to handcuff her. Police Officer Murray's footage then shows that the officers were unable to handcuff her in her seated position due to her backpack. They lifted her up by her arms and attempted to handcuff her. They were unable to do so because strictly went limp and did not stand. At 8:20 into Police Officer Murray's recording, Police Officer Simmons tells strictly "You're going to get sprayed." At the time, the officers are holding strictly s body off the ground by her arms. She is limp and her body leans forward over the floor. The officers then gain control of her arms by lowering strictly back down to the floor onto her right side, where they were able to move her arms back and handcuff her.

NYPD Patrol Guide procedure 221-07 states that the use of OC spray constitutes an application of physical force. It may be used to gain control of persons who are actively resisting arrest or lawful custody. Active resistance is defined as physically evasive movements to defeat a member of the service's attempt at control. It is contrasted with passive resistance, which is defined as minimal physical action to prevent an officer from performing their lawful duty. An example of passive resistance is given as a person going limp when being taken into custody. OC spray should not be

used against subjects who passively resist (Board Review #09).

§ 87(2)(g)	
	Police Officer Simmons stated that he did so in order to overcome
s resistance. § 87(2)(b)	however, only demonstrated passive resistance to arrest by dropping
her weight. § 87(2)(9)	

# Allegation (E) Abuse of Authority: At the Transit District 32 stationhouse, Sergeant Donald Evans threatened to arrest \$87(2)(6)

It is undisputed that after \$87(2)(b) was treated at Brooklyn Methodist Hospital, she was transported to the Transit District 32 stationhouse for arrest processing. While there, \$87(2)(b) initially refused to allow officers to take her photograph or fingerprint her. She ultimately did allow officers to photograph and fingerprint her.

stated that when she told Sergeant Evans that she refused to be photographed or fingerprinted, Sergeant Evans replied that she would be taken to Central Booking if she did not comply. Sergeant Evans that she was willing to go to Central Booking. Sergeant Evans then stated that he would not take her to Central Booking. He told her, "I'm going to charge you for not consenting to give your fingerprints and photograph." Sergeant Evans would add another charge to her arrest, allowed the officers to photograph and fingerprint her.

Sergeant Evans also stated that he warned that he warned that she would have to go to Central Booking if she did not consent to be photographed and fingerprinted. He explained to her that he had planned to release her from the stationhouse with a DAT, but that he would be unable to do so without her photograph and fingerprints. Sign(2)(b) still refused to cooperate. He then told her that an extra criminal charge would be added to her arrest if she did not cooperate. Sergeant Evans explained that there is a specific charge that is applied to prisoners who do not provide their fingerprints after their arrests. He did not recall what the charge is called. Sign(2)(b) then complied.

Police Officer Simmons stated that when \$37(2)(b) refused to cooperate, he and Sergeant Evans explained that they would be unable to release her with a DAT unless she complied. They warned that \$37(2)(b) would instead have to be transported to Central Booking. \$37(2)(b) then complied. Police Officer Simmons denied that he or any other officer threatened to re-arrest \$37(2)(b) or issue her further criminal charges.

Police Officer Murray stated that [887(2)(b)] refused to let a male officer photograph and fingerprint her, but later allowed a female officer to do it. He denied hearing Sergeant Evans or any other officer threaten to re-arrest [887(2)(b)] or to add additional criminal charges to her arrest. He was not aware of a specific criminal charge issued to prisoners who refuse to be photographed or fingerprinted.

NYPD Patrol Guide procedures 208-07 directs officers to take photographs of adult prisoners charged with misdemeanors. NYPD Patrol Guide procedure 208-08 directs officers to take finger- and palmprints from adult prisoners charged with misdemeanors. NYPD Patrol Guide procedure 208-11 states that when a prisoner refuses to be finger- or palmprinted, a desk officer or supervisor from the command making the arrest should document the refusal on the prisoner's movement slip

and in the command log and prepare a "refused prints report." and the prisoner is transported to the relevant Central Booking facility. The <u>Patrol Guide</u> does not direct officers to add additional criminal charges to the prisoner's arrest. The <u>Patrol Guide</u> does not outline any specific procedures on how to handle prisoners who refuse to be photographed (Board Review #10-12).

The arrest procedures outlined in the <u>Patrol Guide</u> states that prisoners who refuse to be fingerprinted should be taken to Central Booking. It does not direct the officers at the arresting command to add criminal charges to their existing arrests or to re-arrest them for a new offense. § 87(2)(9)

### **Allegations Not Pleaded**

stated that she was wearing a backpack when she was arrested. When EMS arrived at the subway station to transport her to the hospital, a police officer removed the backpack by cutting one of the bag's straps off her shoulder with a knife. This officer also stated that \$87(2)(0) would be charged with a felony if she struck him. A review of the BWC footage from this incident found that the person who cut \$87(2)(0) s backpack off and told her that she would be charged with a felony was an EMT, not an NYPD officer. Therefore, property damage and threat of arrest allegations have not been pleaded in regards.

### Civilian and Officer CCRB Histories

§ 87(2)(b)

- Sergeant Evans has been a member of the service for eleven years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Simmons has been a member of the service for nine years and has been identified as a subject in one previous CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(9)
- Police Officer Murray has been a member of the service for nine years and has been identified as a subject in two previous CCRB complaints and three allegations, none of which were substantiated. [87(2)(9)

### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of October 12, 2021, the NYC Office of the Comptroller has no record of \$87(2)(b) filing a Notice of Claim regarding this incident.
- The Office of Court Administration (OCA) did not list any records associated with \$250 s arrest during this incident (Board Review #14).
- According to OCA, \$87(2)(b) has no history of convictions in New York City (Board Review #14).

Squad: <u>1</u>	5		
Investigator:	Owen Godshall Signature	Inv. Owen Godshall Print Title & Name	10/22/2021 Date
Squad Leader:	Signature	IM Simon Wang Print Title & Name	_10/22/21 Date
Reviewer:	Signature	Print Title & Name	 Date